IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 270 OF 2004

Sharada Viswanaathan Menon ... Appellant
VS.
Miss Kumkum Malhotra ... Respondent

Mr. N. Dinkar Rao for the appellant.
Mr. Yigal Gabrial i/b. M/s. Humranwala & Co., for respondent

CORAM: D. G. KARNIK **J.**

DATE: December 1, 2006

P.C.:

1. This appeal is directed against the judgment and order dated 29th April 2003 passed by the learned judge of the City Civil Court at Bombay directing return of the plaint for presentation to the proper court.

2. The appellant is the mother of late Mr. Anil Menon. The respondent claims to be the widow of Anil Menon. The appellant filed a suit being suit no. 2070 of 2000, in the City Civil Court at Bombay for a declaration that the alleged marriage of the respondent with her son be declared to be false, frivolous and void and it be declared that the

respondent was not legally wedded wife of the appellant' s son Anil. She further prayed for an injunction restraining the defendant from representing herself to be the widow of the appellant's deceased son Anil. After considering the evidence adduced by the parties the City Civil Court came to the conclusion that it had no territorial jurisdiction to entertain and try the suit and therefore directed return of the plaint for presentation to the proper court. That order is impugned in this appeal.

3. Before the trial court the case of the appellant was that her son Anil was carrying on business at Bangalore and Tirupur The respondent was working in the office of the appellant 's son. She claimed that Anil married her at Bangalore and that she was the legally wedded wife of Anil. According to the appellant the contention of the respondent that she was the legally wedded wife was false and there was no valid marriage between the appellant' son Anil and the respondent at Bangalore as alleged by her. In the plaint the appellant alleged that the appellant was residing at Bombay and though Anil was carrying on business at Bangalore and Tirupur, his permanent address, in the ration card, in the voters list and for credit card as well as banking was Bombay address and therefore the court at Bombay had the jurisdiction. That was the only ground pleaded in the plaint for ascribing jurisdiction to the City Civil Court at Bombay. In my view

what was the permanent address of the Anil was irrelevant for the purpose of the jurisdiction. The alleged marriage between Anil and respondent took place at Bangalore. Anil and the respondent last resided together at Tirupur. The respondent claims status of wife of Anil on the basis of the alleged marriage at Bangalore. Therefore no part of the cause of action of the suit had arisen at Bombay. The City Civil Court in my view, has rightly held that it had no jurisdiction.

4. Counsel for the appellant however submitted that the cause of action for the suit also arose in Bombay because the respondent had made an application for cancellation of the letters of administration granted in favour of the appellant at Bombay. According to the appellant, being the mother she had applied for the letters of administration to the estate of late Anil in the court at Bombay where the property or part of the property of her deceased son was situated. The letters of administration was granted. Obviously an application for cancellation of the letters of administration had to be made to the same court. The respondent could not have made an application for cancellation of the letters of administration granted by a court in Bombay, to a court at Bangalore. Therefore the mere fact that the respondent made an application for cancellation of the letters of administration to the Bombay court would not give rise to a cause of action for filing of the present suit at Bombay nor would it give

jurisdiction to a court at Bombay to consider whether the marriage between Anil and the respondent was legal and valid or whether there was a marriage in fact at Bangalore. If the marriage had taken place as alleged by the respondent and if the respondent and Anil last lived together at Bangalore or at Tirupur and not in Bombay, no part of the cause of action of the present suit had arisen at Bombay. The trial court was therefore right in holding that it had no jurisdiction to entertain and try the suit.

5. In the order the court appears to have mentioned that the plaint be returned to plaintiff to be presented before the proper court under Order 7 Rule 11 of the Civil Procedure Code. Order 7 Rule 11 of the Civil Procedure Code contemplates rejection of the plaint on the grounds specified therein whereas Order 7 Rule 10 contemplates return of the plaint for presentation to the proper court on the ground that the court before whom the plaint was lodged had no jurisdiction to entertain and try the suit. The reference to Rule 11 of Order 7 appears to be a typographical error and it should be read as Rule 10 of Order 7 of the Code of Civil Procedure. Learned counsel for the appellant does not wish that the power should be exercised by this court under Rule 10-A or 10-B of Order 7 of the Civil Procedure Code. Hence I do not exercise the power.

6. For these reasons there is no merit in the appeal. The appeal is therefore dismissed with the modification that the plaint be returned to the appellant for presentation to the proper court. The appellant is allowed to take back the plaint from the trial court within 4 weeks of the trial court giving intimation of receipt of record to the appellant.

(D.G. KARNIK J.)